

E3ddschc Conference

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ADRIAN SCHOOLCRAFT,

Plaintiff,

v.

10 CV 6005 (RWS)

THE CITY OF NEW YORK, et al.,

Defendants.

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New York, N.Y.

March 13, 2014

2:00 p.m.

Before:

HON. ROBERT W. SWEET,

District Judge

APPEARANCES

NATHANIAL B. SMITH  
Attorney for Plaintiff

JOHN LENOIR  
Attorney for Plaintiff

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City of New York  
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BY: SUZANNA PUBLICKER METTHAM  
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1 THE COURT: Please, be seated. Thanks very much.

2 I am going to take as our text the March 5 letter from  
3 the city.

4 Have all the witnesses now been identified by the  
5 plaintiff?

6 MS. METTHAM: Well, your Honor, plaintiff identified  
7 one witness. However, he did so nearly a month after the Court  
8 had ordered him.

9 THE COURT: That wasn't quite my question. My  
10 question was, have all the witnesses now been identified?

11 MR. LENOIR: Yes, your Honor. I believe so from the  
12 plaintiff's side.

13 THE COURT: All right. OK. So I think that sort of  
14 takes care of that.

15 Who is the late witness?

16 MS. METTHAM: Your Honor, the witness is an individual  
17 by the name of Joe Ferrara. City defendants seek to have him  
18 precluded as a witness based on plaintiff's failure to comply  
19 with the Court's order and the fact that plaintiff had known of  
20 this witness for three-and-a-half years prior to the  
21 identification.

22 THE COURT: OK. Is there a real problem with this  
23 witness?

24 MS. METTHAM: We don't believe he is relevant in any  
25 way but --

1 THE COURT: OK. All right. So we've solved that.  
2 Everybody has been identified.

3 Second, subpoenas. Now, let's see if we could figure  
4 this out. The plaintiff has sought depositions of the Jamaica  
5 Hospital defendants, correct? And we haven't agreed on -- you  
6 haven't been able to work out whether or not those depositions  
7 are going to be taken. Yes?

8 MR. RADOMISLI: Well, they designated two emergency  
9 medical technicians who were at the plaintiff's home. The only  
10 issue is if your Honor needs to extend discovery, then  
11 certainly they will be produced.

12 THE COURT: OK.

13 MR. LENOIR: We have also asked for the hospital to be  
14 deposed, and we could not really discuss the time or who would  
15 be the person representing the hospital for deposition.

16 MR. RADOMISLI: They were supposed to serve a 30(b)(6)  
17 notice and an identification. So that hadn't been done.

18 THE COURT: That had been done?

19 MR. RADOMISLI: Had not been done.

20 THE COURT: What is the problem?

21 MR. RADOMISLI: I don't know. They just haven't  
22 served it. They haven't identified anyone other than the two  
23 EMTs is what I am trying to say.

24 THE COURT: Do you want a 30(b)(6) witness from the  
25 hospital? What do you want?

1 MR. LENOIR: To depose the hospital itself regarding  
2 its policy --

3 THE COURT: Yes. But I drove by the hospital the  
4 other day and, oddly enough, it can't speak. Now, who do you  
5 want?

6 MR. LENOIR: We don't know who the hospital would want  
7 to represent it, whether it is counsel or -- but somebody who  
8 would speak on behalf of the hospital.

9 THE COURT: Well, it sounds like a 30(b)(6) witness,  
10 doesn't it?

11 MR. RADOMISLI: Yes.

12 THE COURT: It sounds like you want to designate  
13 somebody to testify on behalf of the hospital.

14 MR. RADOMISLI: About what?

15 THE COURT: Well, I suspect it is about the incident.

16 MR. RADOMISLI: They've already deposed --

17 THE COURT: No. No. I understand that. But I don't  
18 know what he wants to ask them. Nor do you. But somebody  
19 who -- you don't know who you want?

20 MR. LENOIR: Well, we want, I guess, a 30(b)(6), but  
21 someone to speak on behalf of the hospital regarding their  
22 policies for admitting patients in the context of Officer  
23 Schoolcraft.

24 THE COURT: OK. I take it -- wait a minute. Let's  
25 see if we can be clear. Patients admitted under claims of

1 what?

2 MR. LENOIR: Emotionally disturbed persons.

3 THE COURT: OK. All right. We solved that. You all  
4 can get together on a schedule.

5 Now, subpoenas. I mean, is that it for the hospital?

6 MR. RADOMISLI: As far as the hospital witnesses go?

7 THE COURT: Yes.

8 MR. RADOMISLI: I believe so.

9 THE COURT: OK. How about the city?

10 MR. SHAFFER: Your Honor, it is the city's position  
11 that plaintiff, he waived his right to depose the witnesses he  
12 is now seeking to depose by waiting until the last minute to  
13 seek their depositions. He has known about these witnesses who  
14 are defendants since 2011, and then he seeks to depose them on  
15 a two-week expedited schedule without conferring with anybody,  
16 knowing full well that all of the other depositions took months  
17 to schedule. And he does so in an attempt to basically garner  
18 an extension of discovery from the Court by saying, oh, I  
19 couldn't have possibly known who I wanted to depose without  
20 deposing the first ten witnesses, which makes no sense because  
21 he has known about all of these people since 2011. In fact,  
22 they were identified in his own initial disclosures, some of  
23 them.

24 THE COURT: Yes.

25 MR. SHAFFER: So our position is that he has waived

1 his right to depose them and by waiting until the last minute  
2 and then just unilaterally selecting dates to depose them.

3 THE COURT: What are we talking about in terms of  
4 numbers?

5 MR. SHAFFER: I believe seven additional witnesses,  
6 all of whom their identities have been known for years in this  
7 case.

8 THE COURT: These are not defendants?

9 MR. SHAFFER: Six of them are defendants. I believe  
10 one of them is a nonparty city employee.

11 THE COURT: And the six defendants have not been  
12 deposed?

13 MR. SHAFFER: No. And no formal notice was ever  
14 served until, I believe, 28 days before the close of discovery,  
15 seeking to depose them within a matter of two weeks.

16 THE COURT: And then who is the additional person?

17 MR. SHAFFER: It is an NYPD sergeant who is not named  
18 as a defendant but has been identified as a witness by both  
19 sides, I believe. And he was not present on the night of the  
20 incident.

21 THE COURT: All right. So the plaintiff can take  
22 those seven depositions and we'll talk about scheduling. That  
23 is something that you will have to work out but we'll talk  
24 about it.

25 MR. SHAFFER: Your Honor.

1 THE COURT: Yes.

2 MR. SHAFFER: If I may ask, could the Court preclude  
3 plaintiff from noticing any additional depositions of people he  
4 has got identities of at this point? We are so late in the  
5 game here.

6 THE COURT: Oh, yes. All right. Unless there is  
7 something that's presented today, there are no further  
8 discovery demands -- depositions, documents, etc., etc. --  
9 unless there is something that comes up today.

10 MR. SHAFFER: OK.

11 THE COURT: Now, document demands. Do I have the  
12 sense that that was resolved, or am I wrong?

13 MR. SHAFFER: Not resolved.

14 THE COURT: OK. And the city's position is that the  
15 document demands recently served are duplicative and largely  
16 have been complied with.

17 MR. SHAFFER: Some are duplicative. The remainder for  
18 the most part are just blatantly irrelevant to the case.

19 Just a brief example, your Honor: Requests for  
20 several years worth of logs relating to vehicles towed in the  
21 81st Precinct, with no connection to Mr. Schoolcraft or any of  
22 the defendants.

23 And it's the city's position that serving duplicative  
24 and irrelevant complaints is an abuse of the discovery process.

25 THE COURT: OK. Now, duplicative, that should be --



1 and you all conferred about this but you couldn't agree,  
2 correct?

3 MR. SHAFFER: Plaintiff's position, I believe, is that  
4 it is city defendants' burden to identify which demands are  
5 duplicative, which is illogical because he could keep  
6 submitting duplicative demands requiring us to respond and say  
7 you've already done this.

8 It is our position that he has an obligation to review  
9 the over 10,000 pages of document which he has already received  
10 and decide if he has already gotten what he's asking for,  
11 rather than put the burden on us to sit there and review his  
12 demands, our responses, and type out a response that that says  
13 this is objectionable for all of these reasons plus the fact  
14 that it is duplicative.

15 THE COURT: Is it the city's view that they have  
16 responded to all the document demands?

17 MR. SHAFFER: Not all of them, your Honor.

18 THE COURT: OK.

19 MR. SHAFFER: But the ones that have not been  
20 responded to, many of them are just patently irrelevant.

21 THE COURT: Yes. OK.

22 So now how am I going to deal with the allegedly  
23 irrelevant demands? I don't have those, do I?

24 MR. SHAFFER: I don't believe you do, your Honor, but  
25 what might be appropriate would be, first, for plaintiff to

1 remove the duplicative demands from the -- there are two sets  
2 of demands that were served, totaling like 115 different  
3 document requests. The majority of the second set, which were  
4 completely untimely, are repetitive of the first set. So we  
5 have repetitive between the two sets, repetitive of demands  
6 previously asserted and responded to, and then also irrelevant.

7 THE COURT: Yes. Now, how am I going to deal with the  
8 irrelevant ones? I guess, OK. All right. Let's do it this  
9 way.

10 The city's position is that they have complied with  
11 all except the irrelevant demands. If the plaintiff thinks  
12 that position is unfounded, they will come forth and specify  
13 the documents -- I mean, the demands that have not been met.

14 As for the irrelevant demands, I guess the position of  
15 the city is that the demand is improper because it is  
16 irrelevant. So you will have to tell me what the demands are  
17 and why they are irrelevant, and we will deal with that next  
18 week.

19 Unless you would have a different schedule. Would you  
20 like to have a different schedule? That's fine with me.

21 Have we resolved that?

22 (Pause)

23 Well, I guess we have. OK. We will have to talk  
24 about -- I am over to Roman 3, the February 28th scheduling  
25 order. We are going to have to struggle with that, obviously.

1           The city's direction to witnesses not to answer  
2 questions, that has been resolved, hasn't it?

3           MR. SMITH: I don't believe so, your Honor. There  
4 were a litany of directions not to answer and --

5           THE COURT: This is the issue -- correct me if I am  
6 wrong -- this is the medical issue?

7           MR. SMITH: Well, the medical issue was just a very  
8 small piece of it. Mr. Marino, Mr. Lauterborn, Mr. Caughey,  
9 they were given countless instructions not to answer questions  
10 about prior charges that have been brought against them --

11          THE COURT: OK. OK. Yeah, it's medical issues and  
12 it's disciplinary proceedings, right?

13          Now, the city has given me in its letter a bunch of  
14 authorities for the proposition that, you know, 10 years,  
15 felonies, and whatever those other limitations are. What's  
16 wrong with the city's position?

17          MR. SMITH: Well, the rule on 10 years -- well, let's  
18 back up on the city's position.

19          I would ask, for example, Mr. Marino a question like  
20 have you ever been charged with any kind of corruption or  
21 excessive force or any other charges against you, and similar  
22 kinds of questions were directed at the other police officers.  
23 The instruction not to answer was -- now I understand it --  
24 that the city would tell the witness if it was within the  
25 10-year period immediately before that Halloween night that

1 they went into Officer Schoolcraft's house and it related to  
2 one of the claims in the complaint, then you can answer the  
3 question.

4 THE COURT: Yes.

5 MR. SMITH: So there are two problems with that. One  
6 is that the 10-year limitation is based on a federal rule of  
7 evidence that governs the admissibility of criminal convictions  
8 that are stale. And in order for me to find out whether or not  
9 there is anything in these individuals' backgrounds that would  
10 justify further inquiry, I need in a deposition to be able to  
11 inquire about that background.

12 So what the city has done is said that there is this  
13 rule of evidence that says you can't introduce, unless it is  
14 directly relevant, uncharged --

15 THE COURT: Let me just back up just for a second.  
16 Sorry.

17 MR. SMITH: That is all right.

18 THE COURT: These depositions have been taken, yes?

19 MR. SMITH: Yes. The ones that we are speaking about  
20 now, yes.

21 THE COURT: Let me just ask the city. It is your  
22 position that you would not have objected to any excessive  
23 force incidents so that the incidents that are involved,  
24 whatever they may be, are not related to the kinds of claims  
25 here?

1 MS. METTHAM: Yes, your Honor. My limitation was 10  
2 years prior to the incident to the date of the deposition. It  
3 was allegations that involved truth or veracity and allegations  
4 that were similar to the claims made against the individual  
5 defendants in the case. So excessive force was one that we  
6 allowed them to answer within the 10-year period.

7 And I would also point out plaintiff has said that our  
8 position is based solely on the federal rule's limitation of 10  
9 years. But it's not just that. It's also case law regarding  
10 disciplinary discovery, stating that if it's beyond 10 years  
11 before the incident it wouldn't be admissible at trial and,  
12 therefore, it is not likely to lead to the discovery of  
13 admissible evidence.

14 I would also just point out, your Honor, that during  
15 these depositions we repeatedly asked the plaintiff to call the  
16 Court to avoid this issue. I explicitly told plaintiff that if  
17 your Court issued a ruling, the witness would answer --

18 THE COURT: OK.

19 MR. SMITH: Your Honor, may I just respond briefly to  
20 this position the city has taken?

21 THE COURT: Sure.

22 MR. SMITH: I remember pointblank, for example, asking  
23 Mr. Marino whether or not he ever had any charges or complaints  
24 of excessive force lodged against him, and the city directed  
25 him not to answer that question. And I know because there's

1 media out there that while I think he was either on duty or off  
2 duty he did assault somebody. And it was a magazine article;  
3 it was maybe 5/10 years ago, I don't even know the date. But I  
4 am entitled to make inquiry about whether or not the same  
5 person who used excessive force -- we are talking about a  
6 deposition. There is a difference between asking -- in a  
7 deposition I'm asking, well, tell me about this excessive force  
8 complaint, what was it, when was it. And so what's happening  
9 here is that I don't have any opportunity to make I think  
10 limited inquiry at a deposition about the individual's  
11 background and history so that I'm in a position to address the  
12 question about whether or not at trial a particular incident  
13 should be excluded at trial.

14 So it is like because I don't know anything, I'm never  
15 going to know anything. And, you know, I don't think that is  
16 the law. I mean, I think there are reasons why you are given  
17 more latitude in a deposition to make inquiry about basic  
18 background things. Have you ever been arrested? Have you ever  
19 been convicted of a crime? Have you ever had any charges  
20 against you? So that's one problem I have.

21 The other problem is that there are at least 12 causes  
22 of action laid out in the complaint. They are complex.  
23 Substantive due process. Procedural due process. So a  
24 direction to a witness not to answer questions that are not  
25 relevant to the issues in the case is really an invitation by

1 the witness to decide what he thinks is relevant and then  
2 answer the question with some unexpressed idea about what that  
3 is. And --

4 MS. METTHAM: Your Honor, that is blatantly false.  
5 And if plaintiff actually had part of a deposition to support  
6 that, he would have attached to it to his motion. I did not  
7 direct the witness to answer only questions relating to the  
8 complaint and allowing the witness to decide what that was. I  
9 specifically listed what the allegations were. I had spelled  
10 that out for Mr. Smith during the deposition.

11 Additionally, Mr. Smith's statement that I directed  
12 the witness not to answer any questions about excessive force  
13 is also false. And if plaintiff had a cite to that in the  
14 record, he would have included it.

15 I directed the witness not to answer unless it was  
16 within 10 years prior to the incident and it involved a claim  
17 relating to the case.

18 THE COURT: I take it that at some point the plaintiff  
19 has asked for records of disciplinary proceedings and so on?

20 MS. METTHAM: Yes, back in --

21 THE COURT: And all of that has been produced?

22 MS. METTHAM: And city defendants, when we responded  
23 to the discovery demands, we made similar objections and  
24 limited our discovery in written discovery to 10 years of a  
25 related nature. So plaintiff has been aware of the city's

1 position of this for two-and-a-half years.

2 THE COURT: By the way, is there only one witness as  
3 to which the medical issue is a problem?

4 MS. METTHAM: Yes, your Honor. I believe so.

5 THE COURT: And that is the steroids?

6 MS. METTHAM: Yes, your Honor.

7 MR. SMITH: Well, we're getting a little bit -- there  
8 is -- Mr. Marino, Deputy Chief Marino, was charged, according  
9 to the documents that were produced, for possession of illegal  
10 narcotics and some sort of corruption. That's what the  
11 documents reflect. That's the only information that I have  
12 about that. And so I made inquiry, or tried to make inquiry  
13 at --

14 THE COURT: Excuse me. What documentary -- what are  
15 the documents?

16 MR. SMITH: These are heavily redacted printouts from  
17 an NYPD database which lists the disciplinary history and  
18 incidence histories of the particular defendants in this case.  
19 I think it is called a CCI or CPI index.

20 THE COURT: OK.

21 MR. SMITH: And so --

22 MS. METTHAM: No, it does not include the terms  
23 corruption and illegal narcotics.

24 MR. SMITH: Well, it used the word narcotics and it  
25 used the word corruption. So I wanted to ask the witness, who



1 is a principal defendant in this case, what was it about, and I  
2 was told I am not allowed to inquire about that. I mean,  
3 directions not to answer shouldn't be happening at all in a  
4 deposition. And this is one of the main witnesses in the case.

5 And I will find the transcript reference, but I'm  
6 pretty sure I asked him about excessive force because I knew  
7 about this incident from a magazine article, and I was cut off  
8 about that. I was also cut off about inquiring about pending  
9 charges that are against him by the NYPD. Yeah.

10 So, you know, there is a lot of redacted stuff. There  
11 is little snippets of information I am given, but even when I  
12 prod the witness about it at a deposition I am cut off. I  
13 don't think that is right, Judge.

14 MS. METTHAM: Your Honor, plaintiff has made no  
15 showing for why he would need information regarding a  
16 defendant's alleged steroid use. As I listed in the letter of  
17 March 7th, the officer has a privacy right. He has health  
18 rights. He has not made his health an issue in this case. He  
19 does not have to be forced to make his medical records  
20 available to public view.

21 Additionally, whether defendant Marino used any human  
22 growth hormone in past years has no bearing on the case at  
23 issue, and the plaintiff has made no showing of relevancy.

24 MR. SMITH: Your Honor, I wasn't asking for his  
25 medical records. There was a charge against him for corruption

1 and narcotics use, and I was inquiring about what's the status  
2 of these charges, what is this based on. I didn't ask for his  
3 medical file.

4 THE COURT: Let me ask the city, are there any pending  
5 charges now?

6 MS. METTHAM: About the human growth hormone?

7 THE COURT: Against Marino.

8 MS. METTHAM: I have not checked it to know if they  
9 are still pending as of today, your Honor.

10 THE COURT: Well, it would appear to me if there are  
11 pending charges, the plaintiff should know about them.

12 MS. METTHAM: I don't believe there are any about the  
13 human growth hormone, your Honor.

14 THE COURT: About.

15 MS. METTHAM: The human growth hormone issue. Those  
16 have been closed for years.

17 THE COURT: Well --

18 MS. METTHAM: Your Honor, just to be clear, he was not  
19 accused of using illegal narcotics. He was accused of, I  
20 believe the exact -- I can't remember the exact language but it  
21 has to do with using a substance not permitted by the NYPD.

22 MR. SMITH: Your Honor, while you are mulling over  
23 this issue, I mean, there is a reference in the transcript of  
24 Mr. Marino's deposition where I said, "There is a reference  
25 on" -- and this is page 147, line 3 of the attorney's eyes only

1 portion of the deposition transcript.

2 "There is a reference on the second page to the charge  
3 and spec that you wrongfully, without just cause, punched one  
4 person in the face and pushed one person into a wall. Do you  
5 have any recollection about that incident?"

6 And then Ms. Mettham objected and said, "I'm not going  
7 to allow him to answer questions that's about incidents that  
8 predate October 31, 2009 by more than 10 years, as they are  
9 significantly attenuated."

10 And so --

11 MS. METTHAM: Which is exactly what I told your Honor  
12 I said.

13 MR. SMITH: So let's assume -- I don't know, but let's  
14 assume that this incident happened on a period outside this  
15 10-year window. That's not a proper basis. That might be a  
16 proper basis to exclude that act at trial if I were trying to  
17 use that, but it is not a proper basis to cut off inquiry by me  
18 about what happened. All I have here is a question and no  
19 answer. You know, so I don't think that's the right way to  
20 handle this.

21 THE COURT: I take it that this is some incident about  
22 which the Department has no records?

23 MS. METTHAM: No, I don't believe that is accurate,  
24 your Honor.

25 THE COURT: So the Department did conduct an inquiry,

1 did do something?

2 MS. METTHAM: Correct. However, again, this is 10  
3 years prior to the date of incident. So we're now talking 15  
4 years prior. And as cited in my motion -- and plaintiff has  
5 provided no case law to the opposite -- there have been  
6 discovery rulings limiting discovery, not just admissibility at  
7 trial, based on disciplinary matters being too attenuated or  
8 too unrelated to the matter.

9 THE COURT: And you're representing to me that this  
10 was 15 years ago?

11 MS. METTHAM: That it was at least 10 years prior to  
12 October 31, 2009. So it could be 14-and-a-half as of right  
13 now.

14 THE COURT: All right. I am going to exclude it.

15 The medical issue as far as Marino is concerned, it  
16 seems to me the point there is conceivably -- look, what I'm  
17 thinking is this: If he was -- how about this? An inquiry as  
18 to whether at the time of the incident, or today, he has been  
19 given any prescriptions for mind-altering -- I shouldn't say  
20 "mind-altering," but anything, doctors' prescriptions that  
21 would relate to veracity.

22 MS. METTHAM: That would relate to veracity, not to  
23 anything else?

24 THE COURT: Well --

25 MS. METTHAM: Your Honor, I do have case law stating

1 that a police officer's mental health is not placed at issue  
2 solely by virtue of allegations of excessive force.

3 THE COURT: No. I am not talking about mental health.  
4 I am talking about whether at the time of the incident he  
5 was -- well, why don't we just put it this way.

6 The steroids, assuming that's what it was about, which  
7 the record doesn't indicate, I don't think would have any  
8 effect on veracity or the incident itself.

9 MS. METTHAM: Correct, your Honor.

10 MR. SMITH: I don't quarrel with that. But if the  
11 witness was presented with charges and he testified and there  
12 is information out there about his prior testimony, I mean, I  
13 don't even have an opportunity to find out if there was  
14 testimony, whether or not he testified, whether or not there  
15 were issues raised about his credibility. I mean, these are  
16 issues that are --

17 THE COURT: You mean on whatever the charges were with  
18 respect to his use of prohibited --

19 MR. SMITH: Yeah. He was accused of some pretty  
20 serious things by his employer, and there was an adjudication,  
21 I think, of that but I don't really know for certain. But  
22 there was a process involved there where he testified about  
23 whether or not he did or he didn't do anything, and that goes  
24 to -- you know, his prior testimony goes to credibility.

25 And yet, again, I'm still -- I'm not even in a

1 position to make inquiry about what happened at these hearings.  
2 And I know that he was brought up on charges within the past 10  
3 years. That much I know.

4 MS. METTHAM: Your Honor, this is just a blatant  
5 fishing expedition. By plaintiff's logic, any allegation  
6 against the officer such as coming to work 15 minutes late, any  
7 investigation of that officer would therefore go to credibility  
8 because he might have said that his car broke down when it  
9 really didn't. This really has no bearing.

10 And, additionally, these interviews --

11 MR. SMITH: We are talking about corruption and  
12 narcotics use. We are not talking about minor charges here.

13 THE COURT: Yes. You had better leave that --

14 MR. SMITH: Yes.

15 MS. METTHAM: Your Honor, the other issues is that  
16 interviews of the witness during that investigation do  
17 implicate his medical records, his private health history.

18 Again, plaintiff by merely speculating that possibly  
19 the witness may have said a false statement during an  
20 interrogation, for which he has no basis to believe that -- and  
21 there have been, I can represent, no charges brought against  
22 the officer for that -- is just blatant -- it is a fishing  
23 expedition. There is no relevance to this current  
24 investigation, to this current case.

25 THE COURT: The city does have, obviously, the record

1 or records relating to these charges and their disposition?

2 MS. METTHAM: Yes, your Honor.

3 THE COURT: OK. Produce them for attorneys' eyes  
4 only.

5 MS. METTHAM: Just to be clear, your Honor, are you  
6 talking about the entire investigative file, or are you  
7 referring to just the closing --

8 THE COURT: Well, whatever the charges were and  
9 whatever the disposition was.

10 MS. METTHAM: Are you permitting plaintiff to  
11 re-question the witness about those matters?

12 THE COURT: No, not at this time.

13 MS. METTHAM: Thank you, your Honor.

14 THE COURT: OK. The city's direction -- OK. The  
15 suggestive objections, I'm not going to review the transcripts  
16 and the city's objections. I trust that they will not be  
17 inappropriate.

18 The Queens DA file. Now, the only point of this, as I  
19 understand it, is the identification of an expert witness who  
20 reviewed the DA's materials and rendered some kind of an  
21 opinion.

22 MS. METTHAM: That's more or less accurate, your  
23 Honor. The only thing I would mention is that the expert was  
24 obtained pursuant to a Grand Jury subpoena, and a motion had to  
25 be made to state criminal court to allow him access to the

1 other subpoenaed Grand Jury materials.

2 THE COURT: Right. And all of that happened, and then  
3 he or she presumably rendered an opinion.

4 MS. METTHAM: Yes, your Honor.

5 THE COURT: OK. And so the only point here is the  
6 identification of that person, right?

7 MR. SMITH: And, well, I mean, frankly, no. This is  
8 an onion that gets unraveled over a period of time.

9 There was a redacted document which --

10 THE COURT: No. No. Forget that. All you want is  
11 the identification of this witness?

12 MR. SMITH: No. No. I also want the pieces of his  
13 opinion that were redacted to be unredacted so that I can read  
14 them more than the one time that I read them before finding out  
15 that this was being removed and, in my view, improperly, and  
16 alerting the city that this electronic redaction could be  
17 removed.

18 THE COURT: No. But what you're asking for is part of  
19 the Grand Jury minutes?

20 MR. SMITH: No. I am not, your Honor.

21 MS. METTHAM: No.

22 MR. SMITH: Let's back up a whole lot here.

23 What happened was that the Queens DA issued some  
24 subpoenas. They did not, as far as I understand it, impanel a  
25 grand jury. There was no grand jury minutes. There was no



1 grand jury testimony. Pursuant to that subpoena, they obtained  
2 copies of the Jamaica Hospital medical records, the same ones  
3 that are in spades in this case.

4 THE COURT: Yes.

5 MR. SMITH: And the Queens DA hired an expert, showed  
6 those records to the expert, and he rendered an opinion.  
7 And --

8 THE COURT: To the DA?

9 MR. SMITH: To the DA, that's correct. And not a very  
10 favorable review, from what I remember, saying that they --

11 THE COURT: Whatever.

12 MR. SMITH: Whatever. So the records, there is  
13 nothing confidential about them. They are in spades available  
14 in this case.

15 So my initial concern is that on what basis were you  
16 redacting --

17 THE COURT: Well, forget about the redaction. The  
18 issue is you would like to see the report which he rendered to  
19 the DA?

20 MR. SMITH: Yes. Well, in this case what I want to  
21 see is the Assistant District Attorney's memo which --

22 THE COURT: No. Forget that.

23 MR. SMITH: Well, there is parts of it I have and  
24 parts of it that I don't.

25 THE COURT: Well, whatever you've got, you got. But

1 it doesn't seem -- so what? So the Assistant DA did whatever  
2 he did. Who cares?

3 MR. SMITH: Well, you are right in the sense that what  
4 I want to do is know what the expert said.

5 THE COURT: Yes. I would think so.

6 Now, why doesn't he get the report?

7 MS. METTHAM: Your Honor, the grand jury was never  
8 convened. However, the District Attorney subpoenaed the  
9 documents in order to impanel a grand jury pursuant New York  
10 State law. New York State law says that grand jury proceedings  
11 are secret, and if the Queens County DA or myself were to  
12 produce them without a court's order, we would be committing a  
13 felony under New York State law. Now, New York State law is  
14 more expansive than the federal law on this topic, so documents  
15 gathered for a grand jury, whether or not that grand jury was  
16 convened, would be protected under New York State law. We  
17 believe that the federal court should grant comity to the state  
18 court on this issue of Grand Jury secrecy. Regardless of that,  
19 whether the federal court decides to grant comity, the expert  
20 only reviewed subpoenaed documents, which plaintiff, quite  
21 frankly, already has.

22 THE COURT: Yes.

23 MS. METTHAM: So this expert's opinion is only based  
24 on subpoenaed documents and grants nothing new materially to  
25 this case.

1 THE COURT: Except that he doesn't know what the  
2 opinion was.

3 MS. METTHAM: And, your Honor, my position is that the  
4 opinion should not matter. The District Attorney is not a  
5 defendant in this case.

6 THE COURT: Well, let's put it this way. If it turns  
7 out that whatever the opinion is, he thinks that plaintiff  
8 feels that that opinion is relevant and might want to call the  
9 expert --

10 MS. METTHAM: I don't know how the plaintiff could,  
11 though, your Honor. He was not a treating physician --

12 THE COURT: Well, those are all different issues. You  
13 mean -- you think the opinion is irrelevant. Well, I don't  
14 know.

15 MR. LEE: Your Honor, can I be heard on this?

16 What he is trying to do is he is trying to get a free  
17 opinion in this case when he doesn't have an opinion, he  
18 doesn't have an expert against --

19 THE COURT: Well, maybe he is and maybe it won't work.

20 MR. LEE: By it is a different standard in a DA -- in  
21 a grand jury proceeding than it is in this litigation. So he  
22 shouldn't be allowed to --

23 THE COURT: Actually, it wasn't a grand jury  
24 proceeding. I mean, there wasn't a grand jury proceeding.  
25 What there was was DA subpoenas for a grand jury that was not

1 convened.

2 MR. LEE: Correct.

3 THE COURT: Well, I don't know if that makes a  
4 tremendous amount of difference.

5 MR. LEE: Here's the problem. Let's assume -- and  
6 Mr. Smith has represented a couple of times what the doctor  
7 said in other places. Let's assume he's critical of Jamaica  
8 Hospital or the doctors. We don't know what documents he had.  
9 We don't know if the standard that he's --

10 THE COURT: Well, whether it is admissible or not, who  
11 knows.

12 MS. METTHAM: Though, your Honor, I would also be  
13 concerned that the expert, again, was hired by the DA's office  
14 to do an investigation. They consulted with him. And his  
15 expert opinion is based on their discussions with him. And I  
16 am concerned that the majority of his testimony would not only  
17 involve subpoenaing these grand jury documents but also involve  
18 attorney-client privilege or attorney work product. That is  
19 another concern of mine, that we're also getting into the  
20 intricacies of the DA's decision not to prosecute in this  
21 matter, which we don't believe that plaintiff should be  
22 entitled to.

23 THE COURT: Let's do this. Produce the opinion  
24 unredacted, for attorneys' eyes only, and I don't think it is  
25 going to be admissible but I don't determine that now.

1 MS. METTHAM: And, your Honor, if I may? May we  
2 request a written opinion for that decision, to that effect  
3 that we can produce to our clients to allow us to release the  
4 document?

5 THE COURT: You just got it.

6 MS. METTHAM: Would I be able to submit an order for  
7 your Honor to sign?

8 THE COURT: Sure.

9 MS. METTHAM: OK. Thank you.

10 THE COURT: Sure.

11 MR. SMITH: Your Honor, while we are on that subject,  
12 the redaction issue, like I said, is a little bit --

13 THE COURT: I'm not going to get into that now.

14 MR. LEE: Could I just say one more thing on that,  
15 your Honor?

16 THE COURT: Sure.

17 MR. LEE: I understand your ruling.

18 Let's assume that the doctor, whoever the doctor is,  
19 did not issue a written opinion and the only opinion is  
20 documented in some notes that would be in this file. You are  
21 not directing them to produce a written opinion by the doctor?

22 THE COURT: Well, no. If there is a written opinion,  
23 yes.

24 MR. LEE: OK.

25 THE COURT: Otherwise no.

1 MR. LEE: Thank you, your Honor.

2 THE COURT: Yes. Now, where are we? Oh, the waiver.  
3 That seems to me to be resolved.

4 MS. METTHAM: Your Honor, this has admittedly gone on  
5 much longer than it ever should have. The issue is that we  
6 believe plaintiff waived the attorney-client privilege by  
7 sharing the document with other people.

8 THE COURT: Yes.

9 MS. METTHAM: I told plaintiff I don't know how many  
10 times that if plaintiff says he never shared the document with  
11 someone, I don't want it.

12 THE COURT: Yes. Yes. But now the plaintiff says --  
13 correct me if I am wrong -- yeah, I'll show you the letter, but  
14 that's not going to be a general waiver of the privilege.

15 MS. METTHAM: Correct.

16 THE COURT: That seems to me satisfactory.

17 MS. METTHAM: Your Honor, my concern is this, is that  
18 plaintiff will not state to defendants whether he did share  
19 that letter with anyone. He won't sign an affidavit to that  
20 effect, and he won't sit for a deposition to that effect. So  
21 when plaintiff reserved his rights to the attorney-client  
22 privilege but gives us the document, he allows himself to  
23 later, if we try to use it in any manner, to say you can't  
24 because there is an attorney-client privilege and we never  
25 waived it, which is why I just asked that he sign --

1 THE COURT: Well, let's be clear. I think the  
2 plaintiff may be examined on it, and he has waived the  
3 privilege with respect to that letter.

4 MR. SMITH: Your Honor, let me just clarify something.  
5 The idea here was they wanted him to come down and do a  
6 deposition on whether or not he sent this letter --

7 THE COURT: Yes, because they want to use the letter.

8 MR. SMITH: I know. That's why I said --

9 THE COURT: And they are going to be able to.

10 MR. SMITH: But that's why --

11 THE COURT: Unless we go through all this rinky-dink  
12 about whether the guy actually got the letter, the report.

13 MR. SMITH: That's what I'm concerned about. We are  
14 going to go through that rinky-dink because they have issued --  
15 they filed a motion with the Court to compel Graham Rayman to  
16 produce the records. So this issue is not going to end.

17 THE COURT: I appreciate that, but that would be  
18 obviated if he concedes that he sent the letter.

19 MR. SMITH: He doesn't concede that he sent the  
20 letter. I'm trying to just cut this inquiry off. Because what  
21 they want to do is take his deposition and then make a motion  
22 saying compel the letter, and then they are going to ask for  
23 more discovery because they are going to say, oh, you lied  
24 about not sending the letter. And I'm just saying here. Take  
25 the letter. Let's stop the waste of time. That was my

1 thinking.

2 THE COURT: Yes. But the letter --

3 MS. METTHAM: Your Honor, plaintiff never gave the  
4 letter to Graham Rayman. There is no issue for Graham Rayman  
5 to bring to this.

6 Graham Rayman will also say, we're told, that he never  
7 got it from plaintiff. So if plaintiff signs the affidavit,  
8 there is no deposition. If Graham Rayman says he didn't get it  
9 from him, there is no issue.

10 I just would like to know if plaintiff is asserting  
11 that he waived the right or not, and if he did not waive the  
12 right, I don't think that I am entitled to the document. If he  
13 did waive that, then I think we are entitled to the document.  
14 It is as simple as that.

15 THE COURT: I agree. But how do we get there?

16 MR. SMITH: So, I mean, hypothetically, if I say the  
17 plaintiff will sign an affidavit or say in a deposition that he  
18 did not send this letter terminating his prior counsel to  
19 anybody other than the prior counsel, is that the end of it?  
20 Do I then have to have --

21 THE COURT: I take it, it is the end of it unless the  
22 city doesn't believe that and wants to challenge it.

23 MR. SMITH: That is the point of why I'm saying here  
24 take it, just agree with me that it is not a waiver full-blown.  
25 That's why I am trying to cut this off, because I don't think



1 it is going to stop.

2 So I produce him for a deposition. Then they are  
3 going to say, well, we challenge it because we think you did  
4 waive it even though you say you didn't waive it. Then you  
5 say, well, Mr. Smith, turn it over, and then we are off to the  
6 races again on this.

7 And the big issue here is plaintiff sent a letter  
8 firing his prior lawyer. I mean, this is a major consequence  
9 in this case?

10 MS. METTHAM: Your Honor, I can represent that if  
11 plaintiff puts in an affidavit, that he signs before a notary,  
12 and says I did not share this with anyone else besides my prior  
13 counsel and if Graham Rayman does not come in here and say,  
14 actually, he gave it to me and showed it to me, we don't have  
15 any further avenues for inquiry.

16 THE COURT: Yes. But you just added the question of  
17 whether or not you would accept that representation.

18 MS. METTHAM: Well, I would accept the representation  
19 in the absence of a document -- you know, somebody else having  
20 the document proving that plaintiff lied. I'm not -- we're not  
21 trying to --

22 THE COURT: All I'm saying is the representation is  
23 not going to eliminate the reporter's deposition, however that  
24 turns out.

25 MS. METTHAM: We are not seeking the reporter's

1 deposition, your Honor. We are solely seeking documents from  
2 the reporter. And I am not seeking to question the reporter  
3 about his relationship with Adrian Schoolcraft.

4 THE COURT: I know this is next week, or whenever it  
5 is, but where is that you --

6 MS. METTHAM: We filed a motion, I believe it was on  
7 March 5th -- I could be wrong on the date -- compelling  
8 Mr. Rayman to comply with our subpoena. I actually spoke with  
9 Mr. --

10 THE COURT: And the subpoena was directed to the  
11 letter?

12 MS. METTHAM: To the document, a few other documents  
13 as well, your Honor. But, yes, it is a subpoena for documents,  
14 not for testimony.

15 THE COURT: Well, I take it that the plaintiff will  
16 not sign an affidavit saying I did not send the letter, and so  
17 I suppose this inquiry has to go on. If he does sign such a  
18 letter, the city is going to seek to verify that he did not in  
19 fact send it. Now, whether that -- how that discovery issue is  
20 going to work out is still before us.

21 So what does the plaintiff want to do under these  
22 circumstances?

23 MR. SMITH: What I'm suggesting, and it is just a  
24 suggestion -- and I was trying to negotiate with the city about  
25 this -- is say, look, you want to take the guy's deposition on

1 this issue about whether or not he sent the letter. Take the  
2 letter as long as you agree with me it is not a waiver, and  
3 then we're done. You can go attack him about his credibility  
4 on 7,000 other things. But this is an easy way, because,  
5 frankly, I read the letter. It's not a huge document, it's  
6 three sentences. And in my, you know, opinion, which has been  
7 wrong as many times as right, it is not earthshattering  
8 attorney-client material.

9 THE COURT: Oh, I remember now. Now I remember the  
10 letter. This is the media letter?

11 MS. METTHAM: Yes, your Honor.

12 THE COURT: Ah.

13 MR. SMITH: A media letter?

14 MR. LENOIR: No. That's somebody's interpretation of  
15 it.

16 MR. SMITH: Oh, yeah. Maybe somebody is interpreting  
17 it that way or misinterpreting it that way but --

18 THE COURT: Whatever.

19 MR. SMITH: This was a letter that the plaintiff sent  
20 to John Norinsberg terminating Mr. Norinsberg.

21 THE COURT: Well --

22 MR. SMITH: Your Honor, I would be more than willing  
23 to submit the letter in camera for you to review it, and you  
24 can look at it. I don't know what you meant by a "media  
25 letter." It's not a media letter. It's not about the media.

1 It's about ending a relationship in three sentences with not a  
2 lot of, you know, personal confidences being revealed.

3 But I know, from too many years of being in  
4 litigation, that this is not the -- if he does a deposition,  
5 then they subpoena Graham Rayman and they get a copy of the  
6 letter, or they don't get a copy of the letter, we're never  
7 going to end with this, and you know that as well as I do. So  
8 I'm saying take the letter. They say no, no, no, we don't want  
9 the letter. So what they're fishing for here -- what this all  
10 proves to me is they're fishing for some other way to  
11 manufacture an argument about the plaintiff's credibility.

12 THE COURT: OK. What we'll do is you'll produce the  
13 letter. The letter will not constitute a waiver of the  
14 privilege under these particular circumstances but only with  
15 respect to the letter and its communications.

16 MS. METTHAM: So, your Honor, if defendants were to  
17 seek to rely on that letter at a future date?

18 THE COURT: Well, we'll cross those bridges when we  
19 get to them.

20 MS. METTHAM: OK. Yes, your Honor.

21 THE COURT: Now where are we? The father's documents.  
22 Is that an issue?

23 MR. KRETZ: Yes, it is, your Honor. Mr. Schoolcraft,  
24 the father, was heard on a recording that I believe he made  
25 indicating to the NYPD, I believe, that they will not succeed

1 in preventing Adrian Schoolcraft from telling his story by  
2 stealing all of his records from his apartment because he, the  
3 father, had three copies of everything Adrian ever created.

4 So we heard that on the recording. And when we went  
5 to his deposition we asked him about that. And he said it's  
6 true and it's all in his garage and he didn't have an  
7 opportunity to look through it and we were welcome to come and  
8 do that.

9 So I contacted Adrian's attorneys, really out of  
10 courtesy. Mr. Schoolcraft was to have reviewed those records  
11 and to have produced anything contained in those records for  
12 his deposition, which we took up in Albany. But he said he  
13 didn't have an opportunity to get at them. So he welcomed us  
14 to do it.

15 So I contacted Mr. Smith to inquire whether he wanted  
16 to facilitate this review. And he has objected because he said  
17 having the attorneys for the defendants go to Mr. Schoolcraft's  
18 home would be a traumatic experience for Adrian because Adrian  
19 lives there as well.

20 So what we're simply asking for is a direction that  
21 the plaintiff not interfere with that process, and we will  
22 accommodate him in whatever way we can so that he is not  
23 traumatized by our visit there. We don't intend to go into the  
24 house. We intend to look into the garage. We are happy to  
25 have the stuff transported to another location.

1           Your Honor, the appearance has been throughout the  
2 case that there was a selective production of recordings.

3           THE COURT: Yes. I understand.

4           MR. KRETZ: Frankly, many of the recordings are  
5 damning, if you will, of Mr. Schoolcraft, that is, Adrian. But  
6 there is much that hasn't been produced, and presumably they  
7 either didn't help him or they may have hurt him.

8           In addition --

9           THE COURT: What does the plaintiff want to do?

10          MR. SMITH: Your Honor, well, procedurally, there is a  
11 problem with this because they're trying to enforce a subpoena  
12 against me that was issued out of the Northern District against  
13 Larry Schoolcraft, the father. OK? And so Mr. Kretz contacted  
14 me and said we want to come to the plaintiff's home to look at  
15 these records. And I said, you know, that's really not  
16 appropriate.

17          THE COURT: What do you want to do?

18          MR. SMITH: I want them to identify what documents --

19          THE COURT: No. That they can't do because how could  
20 they identify them? No. No. They are going to get the  
21 documents.

22          How do you want to manage this?

23          MR. SMITH: Well, I think the best way to manage it  
24 would be to have Mr. Schoolcraft, the father, make copies of  
25 whatever --

1 THE COURT: No. No good.

2 MR. SMITH: I don't have control over him, your Honor.  
3 I mean, he's not my client.

4 THE COURT: Oh, so you're saying this whole discussion  
5 has to take place in the Northern District?

6 MR. SMITH: If they want to enforce a subpoena  
7 against --

8 THE COURT: They do want to enforce a subpoena.

9 MR. SMITH: Then they have to go to the Northern  
10 District.

11 THE COURT: And you and your client are not going --  
12 your client is not going to cooperate with that?

13 MR. SMITH: No. What I tried to do was to limit the  
14 aggravation associated with this by having Mr. Schoolcraft, Sr.  
15 produce to me a copy of whatever he said he has, and then I  
16 would turn it over to them. As opposed to having a horde of  
17 lawyers going into Mr. Schoolcraft, the father and the son's  
18 home, ostensibly to do the same thing.

19 The backdrop for this is that Mr. Schoolcraft, the  
20 father, the father said I have three copies of everything. You  
21 know, I mean, I don't know if he has three copies of  
22 everything. But in any event, if it was a normal case, he  
23 would be directed by --

24 THE COURT: Well, one thing that we certainly can  
25 establish is that it is not.

1 MR. SMITH: OK. Well --

2 MR. KRETZ: Your Honor, Adrian Schoolcraft --

3 THE COURT: Let me make this suggestion.

4 Why don't you and defense counsel, one defense  
5 counsel, go up and look at the records together and determine  
6 whether you either -- you eminent folks don't have to do that,  
7 you can send a slave if you want to, but look at the records  
8 and then determine whether (A) they are relevant, and if they  
9 are, how they should be produced.

10 MR. KRETZ: That's fine, your Honor.

11 I would just like to point out, one of the appearances  
12 that the plaintiff is trying to create is that NYPD stole  
13 records. He had mountains of them and they stole them. So he  
14 couldn't make his case about all the corruption in the NYPD.

15 The truth is, as far as I know, nobody at the NYPD  
16 stole anything. And there is no such mountain of documents,  
17 and there was no such mountain of wrongdoing and there is  
18 nothing to all this. But if he shows me an empty garage,  
19 that's fine, it just makes our point. By all means we will  
20 make those arrangements, your Honor. Thank you.

21 MR. LEE: One more thing, your Honor.

22 The city defendants and the medical defendants, we  
23 have different issues than the city has. What if there is one  
24 city attorney and one medical attorney for this inspection?

25 MR. KRETZ: As long as it is Mr. Lee, your Honor, I am



1 all in favor of that.

2 MR. RADOMISLI: I object.

3 THE COURT: How is that? Do you think you can keep  
4 the peace even if there is two to one?

5 MR. SMITH: Yeah, I can handle that. Frankly, Judge,  
6 I mean, all kidding aside, I was concerned about, you know, an  
7 entourage, because you may not remember this but after  
8 Schoolcraft, he went back --

9 THE COURT: Enough already.

10 MR. SMITH: All right.

11 THE COURT: Three people. OK.

12 MR. SMITH: Well, Mr. Kretz and Mr. Lee.

13 THE COURT: All right. OK. So everybody has got to  
14 suffer. If you're going to suffer, they've got to suffer. I  
15 understand.

16 MR. SMITH: No, that's not it at all, your Honor. I  
17 frankly know that they will be respectful of my concerns.

18 THE COURT: Got you. OK.

19 And besides which --

20 MR. KRETZ: As will all defense counsel.

21 THE COURT: Spring is coming and it may be nice up  
22 there.

23 MR. CALLAN: Your Honor, as the one other medical  
24 defendant in the case, I would just ask if our designated  
25 representatives would be able to take photographs of whatever

1 piles of documents exist in the garage as part of the  
2 inspection process.

3 THE COURT: I'm not going to get into that. No. I  
4 mean, I'm not -- the next thing you know, I'm going to be going  
5 up and invading another judge's district. Oh, no, I am not  
6 going to do that. OK.

7 Oh, now more yellow. I signed the opinion today  
8 granting reconsideration and permitting the amendment.

9 MR. KRETZ: Thank you, your Honor.

10 THE COURT: So if that raises an issue, I'll be here.  
11 I'm not quite clear on the locker investigation issue.  
12 Wait a minute.

13 MS. METTHAM: Your Honor, I can clarify for you. This  
14 hasn't really been briefed.

15 What happened is is that Adrian Schoolcraft had a  
16 couple of lockers in the 81st Precinct. They were supposed to  
17 have been sealed following his suspension, but at some point  
18 after he left the seals were broken and they started being used  
19 in regular rotation again.

20 We discovered this last year during the inspection of  
21 the 81st Precinct. IAB immediately launched an investigation  
22 into what happened to the lockers, why had these seals been  
23 broken. I had been in communication with the NYPD about this  
24 investigation throughout. It was on hold for a short period of  
25 time because the union delegate who had been responsible for

1 giving the locker out to police officers had been retired. I  
2 understand that he was interviewed about two weeks ago. They  
3 expect the investigation to be closing in the next couple of  
4 weeks. They said it is at the end.

5 And so there is no closing file right now for  
6 Mr. Smith to have access to. There have been some  
7 interrogations, some; interviews, but there is no actual  
8 closing file to get access to. I believe that the file should  
9 be ready to be produced by May 1st.

10 THE COURT: By?

11 MS. METTHAM: May 1st.

12 THE COURT: OK. Does that end the issue?

13 MR. SMITH: Well, I mean, no, because there is also  
14 the contents. We asked -- actually, the way this whole thing  
15 unraveled was we asked for the contents of his lockers, which  
16 had his own personal stuff as well as some of the crime reports  
17 and other things that, you know, could have been pertinent to  
18 this case. And we went to the 81st Precinct and during the  
19 inspection in September, six months ago, learned that the  
20 lockers that had been sealed pursuant to orders had been  
21 unsealed. And that's when the city represented that they're  
22 launching an investigation, and it's apparently been ongoing  
23 for six months but they need another three months to finish it.  
24 So we want to know what was in the lockers and we want to know  
25 why these lockers were broken into or opened up or what the

1 circumstances were.

2 And May 1 means that, by my count, it's taken them  
3 nine months to figure this out. And so I don't understand why  
4 we can't get any information about what happened to the  
5 contents of this locker before May 1st.

6 MS. METTHAM: Your Honor, number one, they have not  
7 recovered any of the contents of the locker, so it is a moot  
8 point for the production of the contents.

9 In terms of the closing --

10 MR. SMITH: That just raises a whole host of  
11 questions. Deputy Inspector Mauriello was the commander at the  
12 time and now he's got reconsideration. He's going to have to  
13 come back and explain a lot of things about what happened to  
14 that locker as well as some of the other issues that are  
15 unraveled by that. So --

16 THE COURT: OK. I take it the city's position is that  
17 there are no documents or objects that were retained or  
18 obtained from the locker?

19 MS. METTHAM: Correct, your Honor.

20 MR. SMITH: That's not possible. I mean, he had two  
21 lockers there. He left --

22 THE COURT: Who knows.

23 MR. SMITH: I need some sort of --

24 THE COURT: Who knows where they went. But the city  
25 is saying now there are no documents to be produced.

1 MS. METTHAM: And, your Honor, I would also just point  
2 out, it is not that May 1st is when it will finally close; it  
3 is that they just finished interviewing the PBA rep. There may  
4 be a couple more conclusory interviews that they may have to do  
5 if they get more information. But they do expect to close --  
6 the IAB group that is investigating, to close their  
7 investigation in the next couple of weeks. And it then has to  
8 be presented to a steering committee, and after the steering  
9 committee it will get produced to myself and then I will be  
10 able to produce the documents by May 1st. So it is not that  
11 it's -- you know, it is not that IAB is dragging their feet.  
12 There are a lot of steps.

13 THE COURT: All of that is the city's procedural  
14 posture, I mean, with respect to the investigation and so on.

15 But I think the city should take the position with  
16 respect to the subpoena for whatever was in the lockers, the  
17 city should take the position that, whatever your position will  
18 be, I don't think the investigation should alter the power of  
19 the plaintiff to obtain whatever was in the lockers that the  
20 city gathered.

21 MS. METTHAM: Exactly, your Honor. And that would  
22 have been our position. However, there have been no contents  
23 recovered to date to produce to plaintiff.

24 THE COURT: Well, that's obviously not going to be the  
25 end of the story. So that's where we are with that.

1 OK. Now, that leaves us with the -- and there may be  
2 some other things, but it seems to me the next step is  
3 scheduling. And I think we ought to be fairly precise about  
4 that as best we can.

5 What this really boils down to, folks, is do we want  
6 to try this in May or in the fall?

7 MR. RADOMISLI: Your Honor.

8 THE COURT: Yes.

9 MR. RADOMISLI: There hasn't even been expert  
10 discovery exchanged yet and certainly --

11 THE COURT: Well, then that answers the question.

12 Fact discovery, when do you all want to finish that?

13 MR. SMITH: Your Honor, I've, in a March 3, 2014  
14 letter that I sent to the Court, I set a proposed discovery  
15 order outlining -- identifying the witnesses that I know I want  
16 to take as of today, having a proposed fact discovery of  
17 June 14. And I don't know what the Court ruled on the requests  
18 to have the other witnesses come back but we can modify that.

19 But my proposal was that 30 days after fact discovery  
20 ends on June 14th, that the plaintiff would then produce his  
21 expert disclosures, and then 30 days after that the defendants  
22 would do theirs. And we would have a window of a few weeks  
23 over the summer, in August, I'm afraid, to do any depositions,  
24 and then have this case ready for trial in September.

25 That was my proposal and it is my proposal.

1 THE COURT: Yes.

2 MR. RADOMISLI: Your Honor, as I pointed out in one of  
3 my letters to your Honor, certainly Jamaica Hospital, as I'm  
4 sure the other medical defendants, too, intend to make summary  
5 judgment motions. So we can't just skip to trial right after  
6 expert discovery is over. And the prior orders did have  
7 provisions for timing of summary judgment motions.

8 MR. SMITH: I mean, we can work in, frankly, a very  
9 short schedule for motions.

10 THE COURT: Now, close of fact discovery, why do you  
11 think it has to go to mid-June?

12 MR. SMITH: Well, if history is a lesson, taking  
13 depositions in this case -- I mean, there are a lot of lawyers  
14 around. Schedules change. It took me pretty much, you know --  
15 and I'm not saying I was the only one who was responsible for  
16 some of the delays, but I'm not saying the defendants were.  
17 I'm just saying the reality is that the number of witnesses --

18 THE COURT: Look, what depositions remain, fact?

19 MR. SMITH: Fact are Weiss; Gough, G-o-u-g-h; Sawyer;  
20 Duncan; Jessica Marquez; Sal Sangianetti,  
21 S-a-n-g-i-a-n-e-t-t-i; Shantel James; Christopher Broschart;  
22 Timothy Trainor, and a 30(b)(6) of Jamaica Hospital and a  
23 30(b)(6) of the city. So by my count, that's one, two, three,  
24 four, five, six, seven, eight, nine, ten, eleven --

25 THE COURT: And Mauriello.

1 MR. SMITH: And now for sure Mauriello, with the  
2 reconsideration granted, so that's 12. And, you know, I mean,  
3 to get, you know, a set of five lawyers and a witness and a  
4 court reporter, you know, there, it takes time. So that's why  
5 I'm suggesting that June is a realistic date.

6 MS. METTHAM: And, your Honor, if I may?

7 Now that your Honor has stated that plaintiff is not  
8 precluded from relying on his witness Joe Ferrara, the city  
9 defendants would also seek leave to depose that nonparty.

10 THE COURT: OK. So that's one more.

11 Well, what do you all think? Can you do that? What  
12 was your date, June 14th?

13 MR. SMITH: My date was June 14th for fact discovery  
14 and then 30 days and 30 days for experts.

15 THE COURT: Well, anybody have any objection to that?

16 MS. METTHAM: Your Honor, I don't have an objection to  
17 the date. But plaintiff's order as written has again specific  
18 dates listed for these defendants and nonparty depositions, but  
19 plaintiff has not spoken with codefendants, with defendants, or  
20 the individuals.

21 THE COURT: All right. Well, let's do this. OK. So  
22 we will extend the fact discovery to June 14th. The parties  
23 will meet and confer next week on the schedule and resolve it.

24 If you don't resolve it, you will be back here next  
25 week -- a week from now. I mean, on the regular motion day?



1 What is today? Let me see. OK. Life is -- suppose I gave you  
2 10 days. In other words, you get the schedule or be back here  
3 on the 26th.

4 MR. SMITH: That works for me, your Honor, because  
5 I've got a week's trial next week before Judge Marrero so I  
6 really wouldn't be able to sit down and hammer this out before  
7 then. So sometime before that we can sit down and --

8 MR. LEE: I have, your Honor, the original scheduling  
9 order on my computer. We can take the June 14th date and just  
10 push all the other dates based on that. I will submit it  
11 tomorrow to all counsel.

12 MR. SMITH: OK.

13 THE COURT: Atta boy. OK. Then you submit it to all  
14 counsel tomorrow, and if you don't agree you are back here on  
15 the 19th.

16 MR. SMITH: That's next week, your Honor. I am on  
17 trial next week before Judge Marrero.

18 THE COURT: He lets you have lunch, doesn't he?

19 MR. SMITH: I've never tried a case before him so I  
20 don't know.

21 THE COURT: I'm sure he lets you have lunch. And just  
22 tell him that you have a matter with me at noon on the 19th,  
23 and ask him if he would release you for 20 minutes for that.

24 MR. SMITH: OK. But the reason why I was late here  
25 was because I was talking with Judge Marrero and had to

1 terminate that encounter because of this encounter.

2 THE COURT: Yes. Well, all right. All right. I'll  
3 be -- it grovels me to be pleasant but I will say the 26th,  
4 then.

5 MR. SHAFFER: Your Honor --

6 THE COURT: If you are still before Marrero, I would  
7 hold you in contempt if you are not here.

8 Yes.

9 MR. SHAFFER: May I ask for just one point of  
10 clarification?

11 THE COURT: Sure.

12 MR. SHAFFER: It's the case that aside from Inspector  
13 Mauriello, the Court is not going to allow plaintiff to recall  
14 any of the witnesses who have already been deposed, is that  
15 correct?

16 THE COURT: Well, that was something that we hadn't  
17 really addressed.

18 MR. SMITH: Well, I mean --

19 THE COURT: I think we covered everything but --

20 MR. SMITH: There were -- in my application, there  
21 were four people who I wanted to come back. Mauriello was one  
22 of them but that's been resolved.

23 THE COURT: All right. You can get Mauriello.

24 MR. SMITH: So the other ones were Marino, Caughey and  
25 Lauterborn. And like I said in this letter, there are a litany

1 of questions that I put to these witnesses that, you know, they  
2 said that we're not going to answer them. And we really  
3 haven't, you know, resolved whether or not those instructions  
4 to those witnesses were proper.

5 And we also haven't resolved an interesting issue  
6 about the Marino deposition because he -- when I asked him what  
7 did he do to prepare for his deposition, he said, among other  
8 things, that he reviewed a transcript --

9 THE COURT: Yeah. That transcript thing is -- forget  
10 about the transcript.

11 MR. SMITH: Oh, I missed the boat on that?

12 THE COURT: What?

13 MR. SMITH: Did I miss the boat on that?

14 THE COURT: No. I'm sorry. We hadn't discussed it.

15 I meant by that I read the positions on that, and  
16 there is no need to produce the transcript.

17 MR. SMITH: OK. All right.

18 THE COURT: So that eliminates that.

19 MR. SMITH: Yes. Respectfully, I thought you would  
20 come out the other way. But in any event, he was also  
21 instructed not to answer questions about prior charges, prior  
22 convictions, about the claims of corruption against him. So,  
23 you know, I mean, I don't think that's proper.

24 THE COURT: Didn't we just --

25 MR. SMITH: I think we covered one issue, which is

1 whether or not a 15-year-old excessive force charge was  
2 something that I could inquire about, and I understood your  
3 Honor to be saying no.

4 THE COURT: No.

5 MR. SMITH: But, you know, there are a lot of other  
6 things here.

7 THE COURT: Well, I gather not, from the city's  
8 position.

9 MR. SMITH: Well, of course not. From their position,  
10 I'm not entitled to ask any questions that are at all, you  
11 know, probing of, you know, potential misdeeds by their  
12 witness. I mean, that's not a surprise. I'm just surprised  
13 that they can prevail on some of that.

14 THE COURT: The answer is no.

15 MR. SHAFFER: Thank you, your Honor.

16 MR. RADOMISLI: Your Honor, if I may?

17 In light of your Honor's comments earlier today that  
18 there will be no further discovery unless issues are raised  
19 today, I would like to ask your Honor to direct the plaintiff's  
20 attorney to respond to my contention interrogatories which were  
21 served, and, also, we are still waiting for duplicate copies of  
22 photographs that were taken of Jamaica Hospital some nine  
23 months ago.

24 In addition, your Honor, I would appreciate it if your  
25 Honor could direct plaintiff's counsel to respond to my

1 contention interrogatories before the city turns over that  
2 unredacted report, because I would like to know their  
3 contentions, not the city's DA's experts.

4 THE COURT: OK.

5 MR. SMITH: Let me try and address that. It is an  
6 easy one. I think the photographs were sent to all of you guys  
7 along with the deposition videos and -- isn't that true?

8 MR. RADOMISLI: I didn't see them but I understand  
9 they were sent.

10 MS. METTHAM: I just received them.

11 MR. SMITH: OK. So those were packaged by --

12 MR. RADOMISLI: Fine. I believe you.

13 MR. SMITH: The contention interrogatories, they need  
14 leave in order to be able to serve contention interrogatories.

15 And the contention interrogatories that Jamaica  
16 Hospital served weren't really contention interrogatories. And  
17 contention interrogatories, if they are appropriate, should be  
18 done after discovery is completed. Because the whole purpose  
19 is now that you've completed discovery and if you get  
20 permission from the Court, you can get -- there is an  
21 opportunity for all sides to nail down the contentions of the  
22 parties.

23 So, you know, I think that the request was premature.  
24 I objected to it in the original scheduling order for a host of  
25 reasons, the most important being is that it is just a huge

1 amount of work for no real gain. And, you know, I still  
2 maintain that contention interrogatories are a useless and  
3 burdensome exercise, and there is a reason why you need  
4 permission in order to serve them.

5 MR. RADOMISLI: I don't believe you need permission,  
6 your Honor. But in any event, there were three  
7 interrogatories. It is hardly burdensome. And they directly  
8 asked questions other than physicians who have been named, in  
9 other words, other than Dr. Aldana-Bernier and Dr. Isakov, does  
10 plaintiff contend that any other physician departed from  
11 accepted standards of care when Adrian Schoolcraft was treated  
12 at Jamaica Hospital. If so, identify him. Does plaintiff  
13 contend, other than the named physicians, that any physicians  
14 or nurses at Jamaica Hospital intentionally inflicted emotional  
15 distress.

16 These go directly to the heart of the state claims. I  
17 think they are three or four interrogatories. They can be  
18 answered very directly, assuming that he had ever had an expert  
19 review the chart.

20 MR. SMITH: Let me just respond to that, if you don't  
21 mind.

22 The whole point -- I mean, I want to take Jamaica  
23 Hospital, the 30(b)(6) of Jamaica Hospital, and, you know, and  
24 also --

25 THE COURT: How about this?

1 MR. RADOMISLI: The 30(b)(6), your Honor, we have  
2 already established earlier today is going to be about the  
3 policies and procedures when an EDP comes into the Jamaica  
4 Hospital. That's what Mr. Lenoir said today.

5 MR. SMITH: There is a lot of issues that I want to  
6 cover on the 30(b)(6)'s. It is not just one issue.

7 MR. RADOMISLI: Apparently there is only one issue  
8 because that is what your co-counsel said today.

9 MR. SMITH: Well --

10 THE COURT: All right. Now, don't get desperate.

11 So indicate to the hospital to say there are issues  
12 other than the admissions policy, indicate to the hospital what  
13 those other matters are on which you want the hospital witness  
14 to testify. And I am assuming that once you have done that,  
15 that will be settled. If it is not, we'll deal with that on  
16 the 29th. So make that designation within a week.

17 MS. METTHAM: Your Honor, if I may?

18 I have to confess, I did not notice until just now  
19 that plaintiff's proposed scheduling order included a city  
20 30(b)(6) witness. City defendants have not been served with a  
21 30(b)(6) notice. So we would ask that by a date certain that  
22 plaintiff provide a proper 30(b)(6) notice.

23 THE COURT: When do you want to do that?

24 MR. SMITH: I don't have a problem serving a proper  
25 30(b)(6) notice if it's just a question of what were we doing

1 in discovery here and trying to figure out the timing of that.  
2 I do have a trial starting next week. So I would like a little  
3 bit of room here. One week for me puts me in a real bind but  
4 two weeks doesn't.

5 THE COURT: Well, OK. So designate within two weeks  
6 both to the city and to the hospital.

7 MR. RADOMISLI: Your Honor, can I still get responses  
8 to my contention interrogatories, please?

9 THE COURT: Now, the answers to the contention  
10 interrogatories will be due two weeks after the completion of  
11 those depositions.

12 MR. RADOMISLI: Thank you.

13 THE COURT: Now, what else?

14 MR. KRETZ: Perhaps finally, your Honor. May  
15 plaintiff and I have until we finalize the discovery schedule  
16 the opportunity to identify any additional depositions we need  
17 to do now that Mauriello's counterclaims are going forward? So  
18 we identify them quickly and we make sure --

19 THE COURT: Yes.

20 MR. KRETZ: OK. Thank you.

21 THE COURT: June 14th. So what is a reasonable  
22 schedule for -- two weeks later for the designation of  
23 plaintiff's experts. So that would be, say, June 30th. And  
24 two weeks later the defense, if any, for experts.

25 MS. METTHAM: Your Honor, I believe, if I'm not



1 mistaken, that in prior discovery orders defendants were given  
2 a month.

3 Is that correct, Ryan?

4 THE COURT: Well, yeah, but if we're trying to get  
5 this all done over the summer --

6 MS. METTHAM: Well, I understand, your Honor. The  
7 only issue is that plaintiff has had as long as discovery to  
8 submit his plaintiff's expert report, and our rebuttal expert  
9 will only have two weeks to know what the expert is actually  
10 opining on.

11 THE COURT: OK. So we'll say, then, June 30th for the  
12 plaintiff and July 28th for the defense.

13 And don't you think that those depositions -- the  
14 depositions to be completed by, what would you think?  
15 September 8th?

16 MR. RADOMISLI: Psychiatrists, your Honor, are known  
17 for going away in the month of August.

18 MR. LEE: That is true. They have an APA convention  
19 every year in August. That is really a true statement.

20 MR. RADOMISLI: So to the extent that we would have to  
21 produce --

22 THE COURT: So do you think maybe complete any expert  
23 discovery by September 19?

24 MR. RADOMISLI: Thank you, your Honor.

25 THE COURT: And the Pretrial Order.

1           Now, motions. The expert -- whatever happens on  
2 expert discovery is not going to affect the motions, is it?

3           MR. RADOMISLI: It will for the medical defendants,  
4 your Honor, because in order for them to be able to bring a  
5 cause of action against us, they will need an expert to say  
6 that there was a departure from accepted standards of care.

7           THE COURT: OK. So I guess that means any motions  
8 should be made returnable October 1st, and we set the case down  
9 for trial on October 13th.

10          How does that sound?

11          MR. SMITH: The trial date sounds great to me, your  
12 Honor, but just a point of clarification.

13          If the motion is going to be returnable 10/1, do you  
14 mean that a fully submitted motion will be ready for your Honor  
15 by 10/1 or --

16          THE COURT: Yes.

17          MR. SMITH: OK.

18          THE COURT: I am going to hear it on the 1st.

19          MR. SMITH: OK. Then we will have to work together to  
20 have a schedule for that.

21          THE COURT: Yes.

22          MR. RADOMISLI: In that case, your Honor, I would  
23 actually like a firm date for the plaintiff's expert, because I  
24 don't want to be in a position where the plaintiff's expert  
25 can't be deposed until September 19th, and by then it will be

1 too late for us to be able to make a summary judgment.

2 MR. SMITH: You are going to a report from an expert  
3 on 6/30.

4 MR. RADOMISLI: Then maybe we could do the plaintiff's  
5 expert deposition by the end of July as well?

6 MR. SMITH: OK.

7 THE COURT: Is that possible?

8 MR. SMITH: Yeah. Why not? That is OK.

9 THE COURT: OK.

10 MR. SMITH: All right. Plaintiff's medical expert by  
11 7/31. OK.

12 MR. RADOMISLI: Thank you.

13 THE COURT: And I would say the Pretrial Order on  
14 October 1st.

15 What have I forgotten? What have you forgotten?

16 MR. SMITH: Well, I came in a little late. There are  
17 some document demands that I served on the Jamaica Hospital  
18 defendants and the city defendants, and the city defendants  
19 haven't responded formally yet. And Jamaica Hospital responded  
20 with a ton of boilerplate objections, refusing to produce any  
21 information.

22 And the only reason why I am raising that is because I  
23 heard, you know, somebody say that anything that is not  
24 mentioned today shall never ever be -- unless it is mentioned  
25 today, it shall never ever be mentioned again. So I want to

1 mention that I got these supplement document demands based on  
2 mostly the information I learned --

3 THE COURT: The demands on the city we resolved.

4 MR. SMITH: OK.

5 THE COURT: My recollection, although that was two  
6 hours ago, my recollection is that the city takes the position  
7 they have satisfied your demands except for those demands which  
8 they consider to be irrelevant. As to those, they are going to  
9 specify and we're going to hear that issue but I don't remember  
10 when.

11 MS. METTHAM: We had said next week, your Honor, for  
12 that issue. Though when Mr. Smith arrived --

13 THE COURT: Let's do it on the 29th.

14 MS. METTHAM: But is it the 26th?

15 THE COURT: Well, whatever that was.

16 MS. METTHAM: Wednesday, the 26th, I believe.

17 MR. RADOMISLI: Your Honor, we responded to the  
18 plaintiff's attorney's document demands. They were hardly  
19 boilerplate responses. I mean, plaintiff's counsel asks for  
20 financial information regarding Jamaica Hospital. What  
21 possible bearing does that have on the treatment that was  
22 rendered to Adrian Schoolcraft? None, your Honor, is what I  
23 would say.

24 MR. SMITH: Well, respectfully, a lot, from my  
25 perspective. Dr. Bernier testified that she, on average for

1 the 10-year period preceding the time that she decided to  
2 commit Officer Schoolcraft, that she -- 2,000 involuntary  
3 commitments a year she did at the rate of approximately, based  
4 on a five-day week schedule, eight involuntary commitments a  
5 day.

6 And so I served requests on Jamaica Hospital asking  
7 for information about whether or not financial considerations  
8 play a part in the evaluation of the performance of doctors  
9 that are admitting patients and also trying to get information  
10 about how much revenue the hospital generates from involuntary  
11 commitments. The Doctor did --

12 THE COURT: I take it those are questions that would  
13 be appropriate to the 30(b)(6) witness.

14 MR. SMITH: Absolutely.

15 MR. RADOMISLI: Arguably, but those weren't --  
16 plaintiff's counsel didn't serve interrogatories --

17 MR. SMITH: These were documented. To the extent that  
18 you track performance based on involuntaries or to the extent  
19 you track how much money you earn from involuntary  
20 commitments --

21 THE COURT: If --

22 MR. RADOMISLI: Your Honor, we previously responded to  
23 plaintiff's former counsel's document requests regarding  
24 performance evaluations. We've already responded to that, and  
25 that's what I put in my response. "See prior response." If

1 plaintiff's counsel hasn't reviewed that, that is not my fault.

2 MR. SMITH: No, I have reviewed it. I'm just saying  
3 that, you know, we might have an issue here about whether or  
4 not they have turned over the information that I've requested.  
5 And maybe --

6 MR. RADOMISLI: Then why am I hearing about it three  
7 years later?

8 MR. SMITH: Frankly, I was very surprised that the  
9 Doctor said that she on average for the past 10 years has been  
10 committing eight people a day and --

11 MR. RADOMISLI: That doesn't give me much confidence  
12 either.

13 THE COURT: Let's be clear. If there are any -- look,  
14 I think the best thing to do is to have this issue raised with  
15 the 30(b)(6) witness. If there are any documents that relate  
16 to an evaluation of doctors based on commitments, they should  
17 be produced.

18 MR. RADOMISLI: Based on the number of commitments?

19 THE COURT: Yes. OK. Now, is there anything else?

20 (Pause)

21 I look forward to seeing you all again and again. Why  
22 I didn't refer this to the Magistrate is a mystery to me now --

23 MS. METTHAM: Thank you, your Honor.

24 THE COURT: -- except humanity.

25 - - -